

APPEAL NO. 021658
FILED AUGUST 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 6, 2002. The hearing officer resolved the disputed issue by determining that the appellant's (claimant) impairment rating (IR) is 10%. On appeal, the claimant expresses disagreement with this determination and urges that the correct IR is 25%. The appeal file contains no response from the respondent (carrier).

DECISION

Reversed and rendered.

The evidence reflects that in _____, the claimant sustained a compensable chemical exposure injury, affecting her nervous and respiratory systems. The injury was subsequently determined to include asthma and hyperactive airway disease. Dr. O, who was appointed by the Texas Workers' Compensation Commission (Commission) to serve as the designated doctor, initially examined the claimant on February 26, 1999, at which time he assigned a 0% IR. Thereafter, the Commission sent Dr. O a letter seeking clarification, which included the results of a pulmonary function study that had been performed subsequent to Dr. O's initial examination and IR assessment. In a letter dated May 21, 1999, Dr. O explained that in light of the results of the pulmonary study, the claimant's correct IR was 10%. In October 2001, the Commission sent a second letter of clarification to Dr. O, requesting that he review additional medical records and notify the Commission as to whether the records would affect the 10% IR previously assigned to the claimant. Dr. O explained in his response that either the claimant should be examined by a physician with expertise in lung disease or that Dr. O could reassess the IR based on the results of additional testing. At the request of the Commission, Dr. O reexamined the claimant on January 25, 2002, at which time he assessed a 25% IR. Dr. O stated that the pulmonary category in which he rated the claimant when he assigned the 10% IR, allowed for a range between 10% and 25% and upon reconsideration, he considered 25% to be appropriate. The hearing officer determined that the amendment assigning the claimant a 25% IR was made within a reasonable time, but not for a proper purpose. The hearing officer concluded the claimant's IR is 10%.

The Commission adopted Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), effective January 2, 2002, which provides that a designated doctor's response to any Commission request for clarification is considered to have presumptive weight, as it is part of the designated doctor's opinion. In Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002, we held that Rule 130.6(i) "does not permit the analysis of whether an amendment was made for a proper purpose or within a reasonable time." We consider Rule 130.6(i) and Appeal No. 013042-s as dispositive of this case. Because the hearing officer misapplied the

applicable law, the findings relating to reasonable time and proper purpose and the finding that the great weight of the medical evidence is not contrary to the designated doctor's May 21, 1999, certification are reversed. The hearing officer's decision and order is reversed and a new decision is rendered that Dr. O's January 25, 2002, amended IR report is entitled to presumptive weight; that the great weight of the medical evidence is not contrary to the January 25, 2002, amended report; and the claimant's IR is 25%.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Dan R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge